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July 11, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2002-03 Antidumping
Duty Administrative Review: Certain Cased Pencils from the
People's Republic of China

Summary

China First Pencil Co., Ltd. (CFP)/Three Star Stationery Industry Corp. (Three Star)(CFP/Three Star)¹, Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC), and Shandong Rongxin Import & Export Co. Ltd. (Rongxin), the respondents, and Sanford LLP, Musgrave Pencil Company, Rose Moon, Inc., and General Pencil Company, domestic interested parties, submitted comments on the preliminary results of this administrative review covering certain cased pencils from the People's Republic of China (PRC). We have analyzed these comments and recommend that you approve the positions we have developed in the **Department Position** sections of this memorandum.

Background

On January 12, 2005, the Department of Commerce (the Department) published the preliminary results of this review. *See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 2115 (*Preliminary Results*). The period of review (POR) is December 1, 2002, through November 30, 2003. On February 11, 2005, we received case briefs from CFP/Three Star, SFTC, and the domestic interested parties. We received rebuttal briefs from CFP/Three Star, SFTC, and Rongxin on February 24, 2005, and from the domestic interested parties on February

¹ Although we initiated on CFP and Three Star separately, we subsequently found them to be a single entity. *See* Memorandum to The File: Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China - Affiliation and Collapsing (December 30, 2004).

25, 2005². On May 19, 2005, we rejected Rongxin's rebuttal brief because it contained new argument. Rongxin resubmitted its rebuttal brief on May 23, 2005, in accordance with the deadline set by the Department. On May 26, 2005, we issued a supplemental questionnaire and requested comments from CFP/Three Star on documents we placed on the record from a prior review. CFP/Three Star submitted its response and comments on June 7, 2005. The domestic interested parties submitted comments on CFP/Three Star's submission on June 15, 2005. As described in more detail below in comment 1, on June 15, 2005, the Department placed an additional document on the record of this segment of the proceeding and requested that CFP/Three Star and the domestic interested parties submit comments by June 20, 2005. CFP/Three Star and the domestic interested parties submitted comments on this document on June 20, 2005.

List of Comments in the Issues and Decision Memorandum

- Comment 1: CFP and Three Star Affiliation/Collapsing
- Comment 2: Surrogate Valuation of Writing Cores
- Comment 3: Surrogate Financial Ratios
- Comment 4: Pencil Slat Valuation
- Comment 5: Clerical Errors: Inland Transportation Charges, Packing Labor, Slat Usage Factors
- Comment 6: Regression-Based Labor Rate Calculation
- Comment 7: CFP's Subsidiaries
- Comment 8: Surrogate Value for Kaolin Clay

Discussion of Issues

Comment 1: CFP and Three Star Affiliation/Collapsing

The domestic interested parties state that the Department correctly concluded in the preliminary results that CFP and Three Star are a single entity and that the Department should continue to treat both respondents as one entity in the final results. They argue that the Department correctly rejected the revocation of the merger order issued by Shanghai Light Industries Holding (SLI) (Order No. 005, dated January 27, 1997) as evidence that CFP and Three Star are not affiliated. They contend that by putting the revocation of the order on the record, CFP and Three Star acknowledge that the merger was originally effective. In addition, the domestic interested parties argue that there is evidence that Order No. 005's other directives were enacted, such as Three Star's establishment of a group company and the continued tenure of Three Star's CFP-appointed president and the on-going loans cited in the Department's collapsing memorandum. They also contend that the Department properly rejected the assertions in CFP's law firm's memorandum

² The Department closed its Washington, D.C. facilities prior to 5:00 PM on February 24, 2005, due to inclement weather before domestic interested parties were able to file their rebuttal brief. Domestic interested parties submitted their rebuttal brief on February 25, 2005.

that Order No. 005 was never enacted. The domestic interested parties state that this memorandum asserted that CFP had no investing relationship in Three Star, but the memorandum did not address the issue of whether the two companies were essentially functioning as a single entity, which is what is relevant for the Department's determination, according to the remand order of the U.S. Court of International Trade (USCIT) in *Kaiyuan Group Corp., et al v. United States and Pencil Section Writing Instrument Manufacturers Ass'n, et al.*, 343 F. Supp 2d 1289 (CIT 2004).

CFP/Three Star and SFTC, in their joint case brief, maintain that CFP and Three Star are not affiliated. They claim that in their Section A responses to the Department's questionnaire, CFP and Three Star both provided detailed information on all of their affiliated companies. CFP maintains that it made the Department aware that one of its shareholders, SLI, was administratively responsible for Three Star, but that it had no commercial or managerial interaction with SLI or any of its companies, including Three Star. CFP/Three Star and SFTC claim that CFP submitted an outline of certain 1997 events that resulted in a contract between CFP and SLI in which CFP would provide Three Star with management assistance relating to safety, sanitation, and annual inspection issues. CFP also argues that it submitted a certified statement that the company and Three Star never merged, as well as a certification from SLI that the merger never occurred, although an SLI document suggested that it should. CFP also maintains that the merger between itself and Three Star could not have been enacted because such an action would require the approval of CFP's board of directors, and that the management consulting contract ended December 31, 2000.

CFP also claims that it certified in its submissions that it did not coordinate, share customer or supplier information, or share operating or business plans with any other exporter or producer in the PRC. It also maintains that no one on its board of directors nor any of its managers have anything to do with Three Star, according to CFP's Section A response, and that none of the managers, board members, or legal representatives of CFP or Three Star is in any way affiliated with the other company. CFP also states that there are certified statements on the record that the former general manager from Shanghai Great Wall Pencil Co. (Great Wall) (a subsidiary of CFP), Mr. Huang, stepped down from Great Wall in 1997, was nominated by CFP to SLI as a candidate for the Three Star manager position, was proposed by SLI to assume the position, and was appointed to the position by the Three Star Employee Representative Committee, not by CFP.

Regarding the SLI 1997 merger order, which was submitted to the Department subsequent to the submission of documents evidencing other certain events in 1997, CFP argues that it submitted the legal opinion of the Zhong Lun law firm, which specializes in corporate legal work, which concluded that CFP never merged with Three Star, that the merger order does not conform to current Chinese law, and that CFP has not taken any of the steps legally required to set up a merger. CFP also contends that Three Star, in its submissions, disclosed the same information that it was not affiliated with CFP. Finally, it argues, there is a declaration from SLI on the record, stating that SLI issued the merger order without legal authority, that it was never acted

upon, and that SLI rescinded the merger order retroactively to its initial issue date of January 27, 1997.

CFP/Three Star and SFTC argue that based on section 771(33) of the Tariff Act of 1930, as amended (the Act), CFP and Three Star are not affiliated, and even if they were considered affiliated, 19 CFR 351.401(f) states that collapsing two affiliated parties for dumping purposes is the exception, not the rule. They also contend that the Department has stated the same in numerous cases, including *e.g.*, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989) (emphasis in original):

It is the Department's general practice *not* to collapse related parties except in relatively unusual situations, where the type and degree of relationship is so significant that we find that there is a strong possibility of price manipulation. The Department has refused to collapse firms in situations where the facts suggest that such a possibility does not exist.

CFP/Three Star and SFTC maintain that the USCIT in *Nihon Cement v. United States*, 17 CIT 400 (1993), also approved the Department's practice to not collapse related parties stating that:

{As} Commerce stated in *Cellular Mobile Telephones and Subassemblies from Japan*, its determination to collapse related entities is not 'based solely on the extent of their financial relationship.' Other factors relied upon by Commerce in collapsing related companies are that (1) the companies are closely intertwined; (2) transactions take place between the companies; (3) the companies have similar types of production equipment, such that it could be unnecessary to retool either plant's facilities before implementing a decision to restructure either company's manufacturing priorities; and (4) the companies involved are capable, through their sales and production operations, of manipulating prices or affecting production decisions.

In addition, for collapsing purposes in nonmarket economy (NME) cases, they contend, in *Hontex Enterprises, Inc., d/b/a Louisiana Packing Co. v. United States*, 342 F Supp 2d 1225 (CIT 2004), the CIT stated that, "Commerce expand{s} the market-economy inquiry into the 'potential for manipulation' to include NME exporters' export decisions, rather than whether or not the companies share production facilities."

CFP/Three Star and SFTC maintain that there is no relationship between CFP and Three Star, if the Department considers the fact that SLI's issuance of the merger order had no authority and was never implemented, as was stated in the declaration by the Zhong Lun law firm. They also maintain that CFP was called a "group" company since 1996 by its auditors, and that the philosophy in the PRC is "bigger is better," but that this is not evidence that the merger order was implemented. In addition, they argue, the fact that the loans between CFP and Three Star were at market rates and have been satisfied is evidence that there is no affiliation between the companies and that the companies should not be collapsed. Also, according to them, the fact that

the domestic interested parties found CFP's seal on a Three Star financial statement filed with the Commercial and Administration Bureau demonstrates that CFP did not have access to Three Star's privileged information, but only to information that was available to the public. Finally, they assert, both CFP and Three Star certified that Mr. Huang never served Great Wall and Three Star simultaneously, and that during the POR, there was no connection between Three Star's general manager and CFP.

CFP/Three Star and SFTC conclude that the facts in this case do not support a collapsing analysis by the Department because the two companies operate as separate entities and do not have the ability to manipulate each other's prices or production decisions. They argue that the minimal transactions between the two companies are not significant enough to warrant the Department to collapse the two, citing *FAG Kugelfischer George Schafer KGaA v. United States*, 932 F. Supp. 315 (CIT 1996), where the USCIT found that even in instances where two companies were 100 percent owned by the same parent company, a collapsing determination may be inappropriate. They urge the Department to consider the facts of the current review, and acknowledge that CFP and Three Star are not affiliated and should not be collapsed for the final results.

The domestic interested parties respond that CFP and Three Star have not mentioned the fact that they share a common owner. According to the domestic interested parties, SLI owned 100 percent of Three Star in January 1997 and owned 33 percent of CFP, which fits within the Department's definition of "affiliated persons" and "affiliated parties," at section 771(33)(F) of the Act and 19 CFR 351.102. The domestic interested parties also maintain that Order No. 005 was enacted and entailed the merger of Three Star and CFP and the establishment of a group company in which CFP holds the "leadership position." Although CFP asserts that the formation of a group company did not occur due to the SLI order, the domestic interested parties argue that there is evidence to the contrary. They also maintain that the Order's directive to financially integrate the two companies was enacted, as evidenced by the loans from CFP to Three Star. In addition, the domestic interested parties claim that although CFP has attempted to minimize the fact that Three Star's president, Mr. Huang, was formerly employed by CFP, CFP overlooks the fact that Mr. Huang was appointed by CFP, which was consistent with the mandate of Order No. 005 that CFP undertake Three Star's management. The domestic interested parties assert that CFP's continuing managerial oversight of Three Star is reflected in Mr. Huang's continued tenure at Three Star. Finally, the domestic interested parties question why SLI rescinded Order No. 005, if it was never enacted in the first place.

The domestic interested parties conclude that since affiliation has been established between the two companies, the Department has reason to collapse the two into a single entity for antidumping duty purposes, citing 19 CFR § 351.401(f)(1). They assert that what is important to the Department is whether there is a possibility of price or production manipulation, not whether such manipulation has already taken place, citing *FAG (UK) Ltd. v. United States*, 24 F. Supp. 2d 297 (CIT 1998). Since CFP and Three Star produce the same merchandise, cased pencils, the domestic interested parties argue that no retooling or only minimal retooling would be needed to

restructure manufacturing priorities, and that there is a significant potential for price or production manipulation within the meaning of 19 CFR 351.401(f)(1).

CFP/Three Star and SFTC respond that the letter from CFP to SLI, attached to CFP's response to the Department's Second Supplemental Section C & D Questionnaire dated August 20, 2004, at Exhibit 2S-16, specifically stated that CFP had not performed the actions required of it in Order No. 005. They refute the domestic interested parties' argument that this letter was an acknowledgment of the merger's effectiveness. They also argue that there is a large amount of evidence on the record demonstrating that the merger order was never implemented, and that even if the two companies were deemed to be affiliated, none of the requirements for the Department to collapse the two is present in this case, whether the collapsing analysis is the traditional one or the one tailored to NME circumstances. Finally, they contend that it is not enough for the domestic interested parties to repeat what has been said and done in the past; there is no evidence in the current review that CFP and Three Star are affiliated nor that a collapsing determination is appropriate.

Subsequent to the filing of case and rebuttal briefs summarized above, on June 15, 2005, the Department placed on the record of this segment of the proceeding a document titled "China First Pencil Co., Inc., The Second Section of the Second Session of Shareholders Meeting Resolution Announcement" (Meeting Resolution Announcement)³. The Department found this document at the Internet website "JRJ.COM" operated by China Finance Online Corporation. The Department requested that CFP and the domestic interested parties submit comments on this document without submitting new factual information. CFP and the domestic interested parties submitted comments on June 20, 2005.

CFP claims that the Meeting Resolution Announcement is a re-creation of a "standard-format announcement originally published in the publication 'Shanghai Securities', the official newspaper of the China Securities Regulatory Commission." CFP maintains that the Meeting Resolution Announcement reflects a "proposal" by CFP's board of directors to acquire Shanghai YiBeiDe company (YiBeiDe) and merge with Three Star. CFP claims that this is not new information on the record of this proceeding. CFP alleges that Three Star objected to the "proposed" merger and, therefore, CFP abandoned its merger proposal. CFP acknowledges that it acquired YiBeiDe and listed YiBeiDe as a subsidiary in its financial statements, and that the reference to Three Star (referred to in the Meeting Resolution Announcement as Shanghai TriStar Culture and Education Enterprise Co.) is "in the context of the potential for it to become a member of the China First Group." CFP claims that documents in its June 7, 2005, submission to the Department show that CFP subsequently abandoned the use of the "group" name to "avoid difficulties with its U.S. marketing efforts." CFP alleges that its failure to submit the Meeting Resolution Announcement in response to the Department's May 26, 2005, request is a "clerical error" due to a translation error it made regarding the Department's request. Furthermore, CFP

³We placed both the original Chinese version and the Department's translation of the document on the record of this segment of this proceeding.

maintains that the document “with legal and binding effect - the resolution - was provided to the Department” CFP asserts that all of the particulars referred to in the Meeting Resolution Announcement were previously disclosed to the Department.

The domestic interested parties argue that the Meeting Resolution Announcement “proves beyond doubt” that CFP became the corporate parent of Three Star in 1997 and that this “affiliation continues to this day” and categorically demonstrates that CFP formed a group company that included Three Star. Furthermore, the domestic interested parties allege that, since 2000, CFP has repeatedly denied this relationship and now its own corporate document demonstrates that CFP has been deliberately misleading the Department over the course of five separate administrative reviews. Moreover, the domestic interested parties claim that CFP withheld this document from the Department and made successive deliberate misrepresentations of CFP’s relationship with Three Star.

The domestic interested parties characterize the Meeting Resolution Announcement as “minutes” that state that the CFP shareholders approved the formation of a group company that included itself and Three Star and that Three Star is referred to as one of the “member units of ‘China Pencil Group’ also known as ‘China First Pencil Group’.” The domestic interested parties maintain that there is no indication on the record of this segment of this proceeding that the “corporate reorganization memorialized in the minutes has changed,” because CFP has not submitted “corporate minutes or other corporate documents demonstrating that Three Star was no longer part of the group.” Further, the domestic interested parties claim that the Meeting Resolution Announcement approved by the CFP shareholders in May 1997 reflects that SLI’s Order No. 005, issued in January 1997, directing CFP and Three Star to form a group company, “was followed to the letter.” According to the domestic interested parties, the Meeting Resolution Announcement “dispels any notion that Order No. 005 was not followed, was a mere suggestion, was later revoked . . .” as claimed by CFP. The domestic interested parties argue that the activities contemplated for CFP and Three Star in the minutes are precisely those that warrant collapsing.

The domestic interested parties assert that CFP has obstructed the instant administrative review by denying its relationship with Three Star and by withholding the minutes/Meeting Resolution Announcement. The domestic interested parties claim that because CFP falsely denied its relationship with Three Star and withheld requested information, the application of total adverse facts available with respect to CFP/Three Star is warranted and appropriate in accordance with section 776 of the Act. Also, the domestic interested parties argue that CFP has consistently made the false claim that it had not formed a group company with Three Star and was not affiliated with Three Star.

In addition, the domestic interested parties note that CFP failed to provide the minutes/Meeting Resolution Announcement despite having been asked by the Department for information regarding its relationship with Three Star. The domestic interested parties claim that CFP’s

failure to provide the minutes meant that necessary, requested information was excluded from the record. In addition, the domestic interested parties maintain that since CFP itself hosted the shareholder meeting and prepared the minutes, its denial of its relationship with Three Star can only be considered deliberate. Moreover, citing *Kawasaki Steel Corp. v. United States*, 110 F. Supp. 2d 1029, 1041 (CIT 2000), the domestic interested parties claim that the information regarding the CFP/Three Star relationship is of crucial importance in this review; because certain crucial information was withheld, it is logical to draw a more adverse inference in furtherance of the goal of creating an incentive for respondents to provide information. In addition, citing *Mannesmannrohren-Werke AG v. United States*, 120 F. Supp 2d 1085 (CIT 2000), the domestic interested parties argue that the fact that CFP submitted a large volume of information does not rectify the deliberate withholding of the information regarding its relationship with Three Star. In addition, the domestic interested parties claim that CFP hoped to benefit from its omission. The domestic interested parties urge the Department to continue to collapse CFP and Three Star and to apply the PRC-wide rate to CFP/Three Star as adverse facts available, asserting that this rate is reliable and relevant because it is a calculated rate from the 1999 - 2000 segment of this proceeding.

Department's Position:

As we stated in our November 30, 2004, Memorandum to File from Charles Riggle: Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China - Affiliation and Collapsing (CFP/Three Star collapsing memo), “{a}bsent new information that would cause us to reverse the decision to collapse CFP and Three Star, we will continue to treat the two companies as a single entity - with a single dumping margin - for the current review.”

On May 26, 2005, we placed the following documents on the record of the instant review that had been submitted on the record of the December 1, 1999 - November 30, 2000, administrative review segment of this proceeding: 1) CFP/Three Star's June 4, 2002, “materials to rebut, clarify and correct information”; 2) CFP/Three Star's June 6, 2002, supplemental questionnaire response; 3) CFP/Three Star's June 13, 2002, submission to “rebut, clarify and correct”; and 4) CFP/Three Star's June 21, 2002, “Affiliation Rebuttal Brief.” In addition, we placed on the record of this review the following submission, dated April 12, 2002, that had been submitted on the record of the December 1, 1999 - November 30, 2000, administrative review by the domestic interested parties, the Pencil Section of the Writing Instrument Manufacturers Association, Dixon-Ticonderoga Corporation, Tennessee Pencil Company, Musgrave Pencil Company, Moon Products, Inc., and Aakron Rule, Inc. (domestic manufacturers of cased pencils): Order No. 005 issued by SLI. Also on May 26, 2005, we issued a supplemental questionnaire to CFP/Three Star in which we requested CFP/Three Star to review the above-mentioned submissions and state whether the information contained therein is accurate and whether it is applicable to the current administrative review. We also asked CFP/Three Star to submit (fully translated) copies of any CFP shareholder meeting resolutions/announcements, board of directors meeting resolutions/announcements and/or board of supervisors resolutions/announcements dated from

January 1, 1997, through November 30, 2003, that mentioned Three Star, SLI, Guangdong Stationery and Sporting Goods Import and Export Corporation, Order No. 1997 005 or “SLI (1998) #23.”

CFP/Three Star submitted its response on June 7, 2005. The domestic interested parties submitted comments to rebut CFP/Three Star’s response on June 14, 2005. On June 15, 2005, as described above, we placed a document on the record of this segment of the proceeding that directly contradicts CFP’s repeated assertions that it had not approved of a merger and that there was no relationship between CFP and Three Star. *See* the Department’s request for comments released to CFP/Three Star and the domestic interested parties dated June 15, 2005. Despite repeated requests and opportunities to submit information on this issue, CFP failed to disclose this document.

Use of Partial Facts Available

Section 776(a)(2)(A) of the Act provides for the use of facts available if an interested party withholds information that has been requested by the Department. Section 776(a)(2)(C) of the Act provides for the use of facts available if an interested party significantly impedes the proceeding. Because CFP/Three Star withheld information requested by the Department and CFP has consistently denied its relationship with Three Star, Department has resorted to the use of facts available with respect to CFP and Three Star’s relationship.

Pursuant to section 776(b) of the Act, when the Department uses facts available in reaching its determination, it may apply adverse inferences, if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The record in this review indicates that CFP/Three Star failed to act to the best of its ability to comply with a request for information. CFP has repeatedly misrepresented its relationship with Three Star and failed to disclose the Meeting Resolution Announcement. Therefore, as facts available, with an adverse inference, we determine that CFP, contrary to its claims, implemented Order No. 005, which ordered CFP to assume a “leadership position to enact the program of capital reorganization of the two factories” and managerial control of Three Star. CFP’s implementation demonstrates that SLI possesses commercial and manufacturing control of CFP/Three Star, and that, thus, CFP and Three Star are affiliated by way of SLI. As detailed in our preliminary decision, it is appropriate to collapse these entities. The record shows that CFP and Three Star engaged in activities that are consistent with Order No. 005, including the issuance of loans, performance of certain managerial functions, and appointment of Three Star’s General Manager. Given CFP’s withholding of directly relevant and specifically requested information, we further draw an adverse inference that the relationship between the companies continued throughout the POR irrespective of whether a technically formal merger has occurred. There is ample evidence on the record of this segment of the proceeding to support our conclusion that the CFP and Three Star should be collapsed. *See* the CFP/Three Star collapsing memo.

Comment 2: Surrogate Valuation of Writing Cores

The domestic interested parties assert that the Indonesian import statistics the Department used in the preliminary results to value writing cores should also be used in the final results. They state that the Department looks for surrogate values that are representative of a range of prices in effect during the POR, citing *Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 66 FR 46775 (September 7, 2001), as discussed in the Issues and Decision Memorandum at Comment 14. The domestic interested parties argue that the Indian core supplier's price quote submitted by the respondents contains deficiencies. For example, the domestic interested parties argue, the price quote reflects the offer prices of a single source to a U.S. law firm and not actual transaction prices involving pencil makers and is quoted only for exports to the United States. They state that the Department's preference is to use published, nationwide materials such as government import statistics over single-source information, citing *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan*, 67 FR 15535 (April 2, 2002) (*Silicomanganese from Kazakhstan*), as discussed in the Issues and Decision Memorandum at Comment 4.

In addition, they argue that there is no credible documentation to support the declaration submitted by the respondents from a U.S. pencil producer that the price quote reflects those "prevailing in the world market." The domestic interested parties contend that the declaration makes no claim that the price quote reflects prices in a surrogate country, and although the declaration refers to a supposed Mexican price quote, the support for this claim is from an internal e-mail message between employees of the domestic pencil producer. The domestic interested parties also point out that the declaration makes assertions about the nature of the pencil cores imported into Indonesia from specific countries, and it recognizes that the imports consisted of black pencil cores, confirming the suitability of the Indonesian import statistics for valuing Chinese pencil cores.

CFP/Three Star and SFTC argue that the Indonesian import data used in the preliminary results by the Department to value pencil cores are aberrational and that the Department should not use the Indonesian import data in the final results. They contend that the Indonesian imports' average unit value, which includes black and color pencil cores, is at least two-and-a-half times larger than the highest color-only core value on the record. CFP/Three Star and SFTC state that the Indian import statistics from the Internet website "<http://www.eximkey.com>" (the Eximkey data) or from the Indian government Internet website "<http://infodriveindia.com>" (the Infodrive data) they submitted are more reliable because they are contemporaneous with the respondents' reported factors usage and cover the entire POR. In addition, they assert, because the 2001 and 2002 data adjusted for inflation corroborate the 2003 data and because the Department acknowledged the propriety of using the Eximkey data in the 2000-2001 review, the Department should consider these data a reliable source for valuing pencil cores.

CFP/Three Star and SFTC maintain that it is the Department's practice to exclude unreasonable and aberrant surrogate values from the calculation of normal value, citing *Refined Antimony Trioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 57 FR 6801, 6803 (February 28, 1992). They also assert that it is the Department's practice to examine surrogate values for reasonableness citing, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Final Results of Antidumping Administrative Review*, 62 FR 37194, 37199 (July 11, 1997). Because the Department seeks to select the "best available" data to value factors of production, according to CFP/Three Star and SFTC, the Eximkey data are no less reliable than they were in the 2000-2001 review. Additionally, they argue, if the Eximkey data or any of the alternative India-based data were used, it would fit with the Department's preference for using surrogate values from a single source country to the extent possible, citing the Department's February 11, 2004, surrogate country memorandum at 2, "{i}f you find that more than one of the six countries satisfies both statutory requirements, then you should, if possible, narrow the field to a single country on the basis of data availability and quality." Also, CFP/Three Star and SFTC argue, their submission of the declaration of a U.S. industry pencil executive from Dixon Ticonderoga establishes the validity of the prices reflected in the Indian producer domestic price list, and that a price quote obtained from a Mexican producer of commodity pencil cores is within pennies of the prices shown on the Indian price list. CFP/Three Star and SFTC conclude that the price quotes and price lists are relatively consistent with three years of the Eximkey data on the record of this case.

CFP/Three Star and SFTC maintain that the Department is required to use the best available information to determine the value of NME goods, citing, e.g., *Shakeproof Assembly Components, Inc. v. United States*, 268 F.3d 1376 (Fed. Cir. 2001). Among other cases, they also cite *Shanghai Foreign Trade Enterprises Co., Ltd., et al. v. United States*, 313 F Supp. 2d 1339 (CIT 2004), in which the court reiterated (at pp. 21-22) that

{t}he governing statute grants considerable discretion to Commerce in choosing among surrogate values for the factors of production. *See, e.g., Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999). Nevertheless, the statute requires that the "valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries" that Commerce considers "appropriate."

* * *

Consistent with the statutory mandate to use the best information, Commerce must evaluate all data in the record to determine reliability. . . . In fulfilling this duty, Commerce's practice is to discard as unreliable proposed surrogate market values that are aberrational compared to other market values on the record. *See Pencils Final Results*, 67 Fed. Reg. 48,612, and accompanying Issues and Decision Memorandum at Comment 4.

Alternatively, CFP/Three Star and SFTC argue that should the Department refuse to discard the

Indonesian data, it should exclude from the unit value calculation the source countries that sell small volumes at prices out of line with the average. CFP/Three Star and SFTC contend that according to the declaration submitted by the Dixon Ticonderoga executive, the import volumes reflected in the Indonesian import statistics for Australia, New Zealand, Italy, Japan, and Singapore are very small and reflect prices that are larger than the real value of commodity pencil cores and should be excluded. They also argue that the Austrian and German values contained in the Indonesian import statistics are not representative of commodity pencil cores, but rather “high quality specialty pencil cores.” CFP/Three Star and SFTC cite *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), Issues & Decision Memo at Comment 4, as an example of the Department’s practice of using alternative prices to derive a benchmark to evaluate the appropriateness of surrogate value data. They conclude that the Indonesian import data the Department used in the preliminary results do not reflect the pencil core inputs like those used in Chinese pencil production, and should either be replaced with the Eximkey data, the Infodrive data, or Indian price list values or, alternatively, be adjusted as suggested above.

Rongxin also disagrees with the Department’s choice to use non-specific data from Indonesia to value pencil cores instead of specific Indian pencil core data on the record. It argues that the Department used the same data to value both black and color cores in the preliminary results and that it does not agree with the Department using a “one size fits all” value applied to both black and color cores. Rongxin cites *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 43082 (July 21, 2003), as discussed in the accompanying Issues and Decision memorandum at Comment 1, where the Department stated that:

the Eximkey data constitute the best available information on the record of this review with which to value black pencil cores because, unlike MSFTI data {official Indian government import statistics}, these data contain descriptions of the imported merchandise which allow the Department to identify values for the types of pencil cores used by the respondents (e.g., exclude values for color cores). The MSFTI data, on the other hand, cover imports of all cores into India and do not provide specific descriptions of the types of cores imported under the harmonized tariff schedule category for pencil cores.

Additionally, Rongxin argues that the Department in the preliminary results has refuted its prior practice by using the Indonesian data, because they are just as nonspecific as the Indian data not used in the prior review. Therefore, Rongxin contends that the Department should use the Eximkey data on the record, or alternatively calculate some type of ratio to apply to the Indonesian data to allocate values between black and color cores.

The domestic interested parties disagree with using the Eximkey data or the Infodrive data because, they claim, the quantity of the shipments reported in the Eximkey/Infodrive data cannot be determined and the Eximkey/Infodrive data cover only a portion of the total Indian imports of

HTS 96092000. In addition, they argue, the Department should continue to reject the price list and the U.S. executive's statement regarding pencil core prices in India because they are private data upon which the Department typically resists relying for surrogate values.

They argue that the Eximkey data cover imports for only six ports, Chennai, Cochin, Kolkata, Mangalore, Mumbai, and JNPT and that the Infodrive data cover imports from eight ports, covering at most 60 percent of total Indian imports. The domestic interested parties argue that the Department previously rejected Infodrive data, citing *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) (*Wooden Bedroom Furniture*), as discussed in the accompanying Issues and Decision Memorandum at 138, Comment 10. They also contend that the Eximkey data cover a limited number of customers, which is another reason why the Department rejected Infodrive data in *Wooden Bedroom Furniture*. Additionally, the domestic interested parties assert that the Department should continue to reject the Eximkey data because its coverage is more limited than the Infodrive data.

Further, the domestic interested parties argue that the transactions upon which the respondents would have the Department rely are unusable for determining the value of a cased pencil core. They claim that some transactions reported for the Eximkey data are for items with a length of 60mm, which is shorter than the required core length of 183-184 mm, and that some of the core transactions contained in the Eximkey data are for mechanical pencil leads. Also, they argue, the transactions do not tell what quantity is contained in a box, there is no factual basis to believe that there is a consistent number of cores in a box, and the respondents have assumed, without substantiation, that the contents of a box is the same for all importers. The domestic interested parties contend, therefore, that because there is no evidence as to the quantity in a box, the measure cannot be quantified on a per-gross basis, citing *Wooden Bedroom Furniture* at 138. According to the domestic interested parties, the Department rejected Infodrive and IBIS data from the Internet website <http://www.tradeintelligence.com>, in that case because they "do not report the specific import items in a uniformly comparative manner (*i.e.*, cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value."

The domestic interested parties conclude that the remaining 1247 transactions contained in the Eximkey data involve only two parties and occurred in only two months (July and November) of the POR. They argue that it is the Department's practice to use surrogate values that are "representative of a range of prices in effect during the" POR, citing *Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 66 FR 46775 (September 7, 2001), as discussed in the accompanying Issues and Decision memorandum at Comment 16, citing *Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440, 12442 (March 9, 1998) at 12442.

Also, the domestic interested parties argue, the Infodrive data are inadequate for use as surrogates

to value pencil cores because after all the non-usable transactions have been excluded from the data, what remains is sporadic in terms of number of parties, quantities, and time period. According to the domestic interested parties, these reasons are why the Department rejected this data in *Wooden Bedroom Furniture*. Furthermore, the domestic interested parties contend, many transactions included in the Infodrive data involve merchandise other than 184 mm pencil cores, and there is no conclusive information regarding the quantity contained in a box. They argue that the Department rejected the assumption of the quantity of pencil cores contained in a box in the prior segment of the instant proceeding, stating, “{w}e did not rely upon the box-to-pieces conversion from the 2000-2001 administrative review, which was based on GM’s {G.M. Pens International Ltd.} imports by air, because it is not clear that this conversion applies to entries for other importers or applies to GM’s entries for which the method of transportation is not specified.” See *Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29266 (May 21, 2004), as discussed in the accompanying Issues and Decision Memorandum at Comment 1.

Therefore, the domestic interested parties contend, the Indonesian import data provide the best available information with which to value pencil cores, and these data cover numerous transactions over the entire POR and are reported in a single, uniform measurement. In addition, they disagree with the Department’s rejecting the Indonesian data based on the statements of the Dixon executive, a company which the domestic interested parties state is affiliated with a producer of the subject merchandise. They cite *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), as discussed in the accompanying Issues and Decision memorandum at Comment 2, where the Department rejected privately prepared surrogate value data that were “potentially distorted by the influence and/or special interests of any private sector parties.”

Additionally, they argue, the respondents did not demonstrate that the imports from Australia, New Zealand, Italy, Japan, and Singapore are aberrational. Also, according to the domestic interested parties, the assertion that Austrian and German imports cover high-quality commodity (*i.e.*, graphite) pencils does not mean they should be excluded from the data because the assertion is unsubstantiated. However, they posit, the Dixon executive stated that the Austrian and German imports are for graphite cores, which is the item for which a surrogate value is sought.

CFP/Three Star and SFTC rebut the domestic interested parties’ argument that the Indonesian import data are the best available information to value pencil cores. They argue that the domestic interested parties’ statement that the Indonesia data are superior to the single company quote represented by the Indian price lists on the record is flawed because price lists are not price quotes. They contend that price lists are publicly available lists identifying a seller’s market prices for its major products at large and are a seller’s starting point for the negotiation of a price at which the product will be sold. CFP/Three Star and SFTC also refute the domestic interested parties’ reference to *Silicomanganese from Kazakhstan*, where the Department decided that a surrogate producer of comparable merchandise whose financial statements reflect certain raw

material purchases should not be the source of a surrogate value for one of its raw material purchases that is also one of the respondent's factors of production. They argue that, in the instant case, the public price list offers selling prices for the input sought to be valued in India and that the Indian pencil core supplier is not a producer of comparable merchandise within the same context as that with which the Department was concerned in the case cited. In addition, they disagree with the domestic interested parties' argument that the Indonesian import statistics consist of only black pencil cores because the domestic interested parties provided no evidence to support this assertion. Finally, CFP/Three Star and SFTC urge the Department to compare the Indonesian data with different values available to the Department over several years. They assert that the Department rejected a value of \$3.75/kg from Indian import statistics saying that the value was not useable, and again rejected an Indian import value for pencil cores of \$9.10/kg for being too high in the recent remand determination for the 2001-2002 review. Therefore, CFP/Three Star and SFTC contend, the Indonesian import statistics value of \$7.76, which is higher than the value of color-only cores on the record, should also be compared with other values on the record and with the values of pencil cores that the Department has rejected in the past.

Department's Position:

In the preliminary results, we valued black and color cores using Indonesian import data from the World Trade Atlas (WTA) for January 2002 through December 2002. There is no usable information on the record of this segment of the proceeding that allows us to calculate separate surrogate values for black and color cores. We are continuing to use Indonesian import statistics to calculate a surrogate value for pencil cores for the final results because it is the best information on the record of this segment of the proceeding. In selecting publicly available surrogate values, the Department prefers to select values that are: 1) for products as similar as possible to the input being valued, 2) representative of a range of prices in effect during the POR, and 3) based on transactions contemporaneous with, or closest in time to, the period under consideration. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 43082 (July 21, 2003). Based on our review of the Eximkey data in the worksheet submitted by CFP/Three Star and SFTC, we determine that these data are not representative of a range of prices in effect during the POR because, after excluding unusable entries from the data, only five potentially usable entries remained to value pencil cores. We considered the following Eximkey data to be unusable: 1) entries of non-pencil core articles, 2) entries of pencil cores from NME countries and countries providing export subsidies, 3) entries of pencil cores for which quantities could not be reliably determined (entries for which quantities are stated in terms of "boxes," "tubs," or kilograms)⁴, 4) pencil cores of dimensions not consistent with the dimensions of cores used to produce subject merchandise (including mechanical pencil cores).

⁴ There is no information on the record from which the Infodrive data can be converted from kilograms to pieces/gross.

In addition, we reviewed the Infodrive data in the worksheet submitted by CFP/Three Star and SFTC, and determine that these data are not representative of a range of prices in effect during the POR because, after excluding unusable entries from the data, only five entries remained potentially usable to value pencil cores. We considered the following Infodrive data to be unusable: 1) entries of non-pencil core articles, 2) entries of pencil cores from NME countries and countries providing export subsidies, 3) entries of pencil cores for which quantities could not be reliably determined (entries for which quantities are stated in terms of “boxes,” “tubs,” or kilograms), 4) pencil cores of dimensions not consistent with the dimensions of cores used to produce subject merchandise (including mechanical pencil cores), and 5) entries for which no exporting country was reported.

We did not rely upon the box-to-pieces conversion from the 2000-2001 administrative review, which was based on G.M. Pens International Ltd.’s (GM) imports by air, because there is no evidence that this conversion applies to entries for other importers or applies to GM’s entries in the instant POR. Thus, the current situation contrasts with that found in the 2000 - 2001 segment of this proceeding, in which the Department valued pencil cores using the Eximkey data because the data consisted of numerous usable import transactions.

Further, the Eximkey data and the Infodrive data worksheets submitted by CFP/Three Star and SFTC do not include the raw data from the source. Thus, we are deprived of the opportunity to fully assess the reliability and accuracy of the data.

Furthermore, we did not value pencil cores using the Indian price lists proffered by CFP/Three Star and SFTC for the following reasons. First, one of the price lists provides export prices. The Department prefers to base surrogate values on domestic or import prices. Second, there is no evidence on the record that any sales of cores were made at the prices shown on the price lists. Finally, the price lists cover prices offered by a single Indian core manufacturer, and thus the values included therein cannot be considered to be “broad and representative” (*see* the Preamble to the Department’s regulations, which states that, “when compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.” *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997)).

Thus, we examined the Monthly Statistics of the Foreign Trade of India (MSFTI) data on the record. We calculated an average unit value for pencil cores imported into each of the countries on the Department’s surrogate country list for this review using import statistics compiled by each surrogate country. In considering the reliability of each country’s import data, we followed the Department’s practice of determining whether the data consists of low-volume imports from certain countries with per-unit values substantially different from the per-unit values of the higher quantity imports of that product from other countries. *See Shakeproof Assembly Components Division of Illinois Tool Works, Inc., v. United States*, 203 F. Supp. 2d 486, 492 (CIT 2000) (in determining whether data are reliable, the Department’s practice is “to disregard

small-quantity import data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries.”). Based on our review of the data, we excluded from our calculations imports from certain countries. See the Memorandum From The Team: Surrogate Values for Factors of Production for the Final Results of the Administrative Review of Certain Cased Pencils from the People's Republic of China, (July 11, 2005), which is on file in the Central Records Unit, room B-099 of the main Department of Commerce building. In addition, we excluded from our calculation any imports from countries which the Department has determined maintain broadly available, non-industry specific export subsidies which may benefit all exporters (those countries include South Korea, Thailand, and Indonesia). See *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. We compared the average unit value for pencil cores calculated using Indian MSFTI data to the average unit values for pencil cores calculated using import statistics from the other countries on the Department's surrogate country list and found the average unit value calculated using Indian MSFTI data to be aberrational.

Based on the foregoing, we consider Indonesian import statistics to be the most reliable of the import statistics for the other countries on the surrogate country list. The statistics are specific to the input we are attempting to value, *i.e.* HTS 96092000 covers black and colored pencil cores. In addition, the Indonesian import statistics are broad and representative; Indonesian imports of pencil cores comprise approximately 86 percent of the total imports of pencil cores into all of the countries on the Department's surrogate country list applicable to the instant POR, whereas Indian imports comprise only about 2 percent. Moreover, the Indonesian import data are contemporaneous with the POR. Finally, we find that the Indonesian data are not aberrational because the Indonesian value falls within the range of the average unit values of the other countries on the Department's surrogate country list. See the memorandum to the file from the team dated July 1, 2005. Therefore, for the final results of review, we valued black and color cores used in the production of subject merchandise based on Indonesian import statistics, which we find to be the best available information on the record. See the December 30, 2004, Factors of Production Memorandum (FOP Memo) for further details.

Comment 3: Surrogate Financial Ratios

The domestic interested parties argue that the Department in the final results should use the financial ratio data from *Wooden Bedroom Furniture* as the surrogate financial ratios. They contend that because the Department was unable to obtain surrogate financial data from a pencil manufacturer, the *Wooden Bedroom Furniture* surrogate financial ratios are more comprehensive and more reliable than Asia Wood International Corporation's (Asia Wood)⁵ 2000 financial data used in the preliminary results. They argue that the *Wooden Bedroom Furniture* financial ratios do not have the deficiencies of Asia Wood's data. The domestic interested parties assert that the

⁵ Asia Wood is a Philippine producer and exporter of a variety of products, including wood products.

Wooden Bedroom Furniture data met the Department's criteria for employing the same production processes as used by the respondents, specifically cutting wood, sanding wood, gluing wood, and painting wood. They also contend that the data are contemporaneous with the POR and cover multiple producers in the primary surrogate country, meeting the Department's general preferences for surrogate valuation, citing *Wooden Bedroom Furniture* at Comment 3. Conversely, the domestic interested parties argue, Asia Wood's data are several years out of date, are from a secondary surrogate country, and cover only a single company. In addition, the domestic interested parties maintain that Asia Wood is engaged in operations other than the manufacture of wood products, specifically importing, exporting, wholesaling and retailing products, and that it manufactures and trades in non-wood products, such as crafts and handicrafts. They argue that because Asia Wood's manufacturing operations and non-wood related operations' financial data cannot be isolated, its financial data cannot be adjusted to exclude inappropriate items. Finally, the domestic interested parties disagree with the Department using the 2003 Asia Wood financial data submitted by Rongxin because while the financial data are contemporaneous, they contain the same deficiencies as the Asia Wood's data used in the preliminary results.

Rongxin argues that the Department should use Asia Wood's financial statements from 2003 to calculate the surrogate financial ratios. It asserts that Asia Wood produces a variety of wood products, including furniture, but that it also produces wood products that are more simple in nature and more comparable to the pencil production of the respondents. Rongxin also argues that wooden bedroom furniture is a much more high-value product than pencils, and that its cost, overhead, sales, general and administrative (SG&A), and profit structure differ greatly from pencil production.

CFP/Three Star and SFTC respond that 19 CFR 351.408(c)(4) states that "{f}or manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." They argue that the Department departs from using a single surrogate country to value factors of production when suitable information is not available and if this is the case will look to another surrogate country identified by the Office of Policy as being at a comparable level of economic development to the NME. They cite *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), as discussed in the accompanying Issues and Decision Memorandum at Comment 5, where the Department considered whether Indian financial data could be used, depending on the availability of information from producers of identical or comparable merchandise.

They assert that the Department's practice in selecting surrogate financial data is to consider whether products have similar physical characteristics, end uses, and production processes. Specifically, with regard to considering production processes, CFP/Three Star and SFTC cite *Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review*, 66 FR 8383 (January 31, 2001), as discussed in the accompanying Issues and Decision

memorandum at Comment 7, where the Department took into account the complexity and duration of the processes and types of equipment used in production. They assert that the Department also has a preference for using producer-specific data instead of industry-specific data, when industry-specific data tend to be broad in terms of the merchandise included, citing *Creatine Monohydrate from the People's Republic of China, Notice of Final Determination of Sales at Less Than Fair Value*, 64 FR 71204 (December 20, 1999), as discussed in the accompanying Issues and Decision Memorandum at Comment 1.

CFP/Three Star and SFTC argue that the financial data of Asia Wood relate to the production of woodworks and crafts and products such as furniture, doors, cabinets, handicrafts, etc., which is more comparable to that of the production of pencils than the financial data of furniture producers whose production activities include beds, tables, dressers, armoires, and chests of drawers. They also refute the domestic interested parties' assertion that Asia Wood is involved in operations other than the manufacture of wood items, including importing, exporting, wholesaling and retailing products because, according to their reading of Asia Wood's 2003 financial statements, nearly 100 percent of its sales are of products Asia Wood manufactures from its raw material purchases. Finally, CFP/Three Star and SFTC assert that the Office of Policy listed the Philippines as another potential surrogate country and that Asia Wood is not a large conglomerate like some of the *Wooden Bedroom Furniture* producers, and is therefore more comparable to the Chinese pencil producers.

Department's Position:

We have determined that the 2003 Asia Wood financial statements are appropriate to use to calculate surrogate financial ratios for the final results of this review. We based our determination on the fact that Asia Wood produces a variety of simple wood products similar to pencils in terms of physical characteristics, using production processes comparable to those used to produce pencils. In addition, the Asia Wood financial statements are producer-specific data that are more specific to the subject merchandise than the industry-wide data, and thus, are more likely to approximate respondents' actual experience. Furthermore, the 2003 Asia Wood financial ratios are contemporaneous with the POR, and continuing to use Asia Wood's data is consistent with what has been done in prior segments of this proceeding. Thus, for the final results, we used Asia Wood's 2003 financial statements to calculate the surrogate financial ratios.

Comment 4: Pencil Slat Valuation

The domestic interested parties assert that the Department in the preliminary results used *Hardwood Market Review* data from the Appalachian region to value pencil slats, instead of the Northern region price data it had used in prior reviews. In addition, they argue that the Department should not continue to use 4/4 basswood lumber (*i.e.* one inch lumber) to value pencil slats, because according to the diagram they submitted from the website of a Chinese

pencil producer, Marco Shanghai Stationery Company (Marco), 12/4 lumber (*i.e.*, three inch lumber) is used in pencil production, not 4/4 basswood lumber, which is rectangular.

Rongxin disagrees with the domestic interested parties' claim that the Department only used prices in Appalachia to value basswood, and points to Attachment 11 of the Department's December 30, 2004, FOP Memo (the FOP memo), which states that the data were compiled from Appalachia, Maine, New Hampshire, Vermont, and New York. It also argues that Marco's pencil production cited by the domestic interested parties is not representative of how Rongxin's supplier makes pencils. While Marco may use square slats, Rongxin argues that during a prior verification, the Department verified that Rongxin purchases rectangular slats. Therefore, it contends, the Department should not make any changes regarding the value for slats.

CFP/Three Star and SFTC disagree with the domestic interested parties' assertion that the Department should use 12/4 lumber to value pencil slats. They cite *Writing Instrument Mfrs. v. U.S. Department of Commerce*, 21 CIT 1185, 1201, 984 F. Supp. 629 (1997) (*Writing Mfrs.*) where the CIT stated:

Plaintiffs {domestic interested parties} contested Commerce's use of 4/4 inch thickness basswood slat values stating that Commerce should have used 12/4 (three inch) thickness instead. . . . Plaintiffs assert that 4/4 thickness wood cannot be used to make a pencil slat. China First actually purchased slats measuring 1/4 inch thick and Commerce determined that 4/4 inch thick basswood slats were the closest surrogate. Remand determination at 11. The Court finds that Commerce's use of the 4/4 inch basswood value furthers the objective of determining the most accurate and reliable surrogate.

Therefore, CFP/Three Star and SFTC argue, the Department should not take the domestic interested parties' suggestion to change the surrogate valuation of slats for the final results.

Department's Position:

As indicated on the Excel spreadsheet received from *Hardwood Market Report*, the Department used Northern region basswood price data (covering price data from Appalachia, Maine, New Hampshire, Vermont, and New York) to calculate a surrogate value for slats in the preliminary results. *See* the FOP memo. In addition, there is no indication on the record of this review that Marco's production process utilizing 12/4 basswood lumber is representative of that used by the respondents in this review. We note that 4/4 lumber is closer in thickness to the slats purchased by respondents during the POR. Our finding that 4/4 basswood lumber is the appropriate surrogate for slats was upheld in *Writing Mfrs.* as described above and thus for the final results we have continued to value slats using 4/4 basswood lumber for the final results. *See* the FOP memo for additional discussion of this issue.

Comment 5: Clerical Errors

A. Inland Transportation Charges

CFP/Three Star and SFTC argue that the Department erred in the preliminary results by not converting into U.S. dollars inland transportation charges stated in rupees. For the preliminary results, the Department valued truck freight using the freight rates used in the Great Indian Bazaar, at 0.00117 Rs/kg, according to CFP/Three Star and SFTC. They claim that this value was used in the transportation expense calculation for the inputs but was not converted to U.S. dollars in the calculation of normal value. CFP/Three Star and SFTC explained that the Department calculated the inland freight transportation cost correctly for moving an input from the supplier to the factory 25 kilometers from the port by using, for example, the calculation: $25 * 0.00117 \text{ Rps.} = 0.02925 \text{ Rps.}$ CFP/Three Star and SFTC argue that the Department erred by using the resulting 0.02925 Rps. as USD 0.02925 in calculating normal value. Instead, they assert, the charge of 0.02925 Rps. should have been converted into U.S. dollars by multiplying the value by 0.021373, resulting in a USD 0.00062516. CFP/Three Star and SFTC maintain that this error was committed by the Department in the margin calculations of China First, Three Star, and all of SFTC's suppliers, and should be corrected for the final results.

Department's Position:

We agree that in calculating the input costs for CFP, Three Star, and SFTC's suppliers, the transportation expenses for each input were not converted from rupees to U.S. dollars. For the final results we have converted inland freight transportation expenses from rupees to U.S. dollars. *See* the calculation memoranda for CFP/Three Star and SFTC.

B: Packing Labor

CFP/Three Star and SFTC claim that the Department in its NME constructed-value methodology calculates the cost of manufacturing (COM) by summing material, energy and labor costs associated with manufacturing the finished products. Next, they argue, the Department adjusts the COM by the appropriate factory overhead surrogate financial ratio, followed by applying the SG&A surrogate financial ratio to the overhead-adjusted COM to derive the cost of production (COP). The COP is then adjusted by the surrogate financial ratio for profit, they assert, followed by the addition of packing materials and labor costs. CFP/Three Star and SFTC contend that the Department erred in the preliminary results by including packing labor and materials in the COM, overstating the COM to which the factory overhead ratio was applied, and overstating the COP to which the SG&A and profit ratios were applied.

Department's Position:

We agree that packing labor was inadvertently included in the calculation of COM for CFP/Three Star and SFTC. This correction has been made for the final results. *See* the calculation memoranda for CFP/Three Star and SFTC.

C: Slat Usage Factors

CFP/Three Star and SFTC state that CFP reported a slat usage factor for ordinary-size pencils that was approximately one-half the slat usage factor for carpenter pencils. They claim that the Department erred in the preliminary results by overriding CFP's reported factors for its ordinary-size pencils, reported as control numbers (CONNUM) A through Y, and replaced the correctly reported factor with the carpenter-size usage rate factor. As a result, they argue, the Department double-counted the slat usage for CONNUMs A through Y.

Department's Position:

We agree that CFP's slat usage factors were incorrectly over-ridden in the preliminary results. This correction has been made for the final results. *See* the calculation memorandum for CFP/Three Star.

Comment 6: Regression-Based Labor Rate Calculation

CFP/Three Star and SFTC argue that the statute requires the Department to value the factors of production based on the best available values of such factors in an appropriate market economy country or countries at a similar level of economic development, citing sections 773(c)(1), (3) and (4) of the Act. The only exception to this requirement, according to them, is where there is inadequate information to determine normal value, citing section 773(c)(2) of the Act.

CFP/Three Star and SFTC contend that the Department, in accordance with a regulation (19 CFR 351.408(c)(3)) that is inconsistent with the statute, has begun to derive an incorrect regression-based wage rate based on the 2002 Yearbook of Labor Statistics published by the International Labor Organization (ILO). They argue that the Department should use the wage rate included in their February 1, 2005, surrogate value submission, attached at Exhibit 4 of their case brief, which lists the 2002 wage rate for India as USD 0.14 per hour. Alternatively, according to CFP/Three Star and SFTC, if the Department chooses to use the regression-based wage rate based on the ILO statistics, the Department should revise its calculations to include Kazakhstan and the other 18 countries that were left out of the regression analysis to yield a wage rate of USD 0.45. As a third-best option, they argue that the Department should use a standard-least-squares regression analysis, yielding a wage rate of USD 0.72.

Rongxin agrees with CFP/Three Star and SFTC that the Department's mechanism to determine labor rates is incorrect. It claims that the Department has the labor rate specific to India and should use that, or if the Department continues to use a basket of rates, it should include the wage

rates of 19 additional countries, for which the ILO has issued average wage rates, missing from the Department's database.

The domestic interested parties argue that the Department is required to use a regression-based wage rate citing 19 CFR 351.408(c)(3) and *Wooden Bedroom Furniture* at 179, and therefore it would be contrary to law to use an average Indian wage rate, as suggested by the respondents. The domestic interested parties disagree with CFP/Three Star and SFTC's claim that the Department's regulation is contrary to the statute and argue that they failed to address the regulation's deficiencies in light of the applicable standard, as set forth in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. (1984) and *United States v. Haggard Apparel Co.*, 526 U.S. 380 (1999). Hence, the Department should follow its regulation and continue to use a regression-based wage rate for the PRC for the final results.

Department's Position:

We do not agree that we should use country-wide wage rates from economically comparable countries as a surrogate value for PRC labor, or that we should use India's average wage rate of USD 0.14/hour. Use of such data as a surrogate for PRC labor would be contrary to the Department's regulations. Section 351.408(c)(3) of the Department's regulations directs the Department to value labor in cases involving NME countries as follows:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

In accordance with section 351.408(c)(3) of the Department's regulations, the Department has calculated the regression-based expected wage rate for the PRC and has used this calculated regression-based expected wage rate for the PRC in our calculation of the final results of review in this proceeding. This wage rate is listed on the Import Administration web site under "Expected Wages of Selected NME Countries." See <http://ia.ita.doc.gov>.

Recalculating the regression analysis using a different basket of countries would amount to a significant change in the Department's methodology; such a change should be subject to comment from the general public. Thus, it would be inappropriate to restrict this public comment process to the context of the instant review. Consequently, the Department has invited comments from the general public on this matter in a proceeding separate from the current review of this order. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761 (June 30, 2005).

Therefore, for the final results of review, the Department used the 2004-revised expected wage rate of \$0.93/hour as a surrogate for PRC labor costs, which the Department derived using its regression-based methodology for the determination of wage rates for the PRC.

Comment 7: CFP's Subsidiaries

CFP argues that the Department should identify CFP's subsidiaries, Shanghai Great Wall Pencil Co., Ltd. (Great Wall) and Shanghai First Writing Instrument Co., Ltd. (First), in the margins section of the final notice and in its instructions to U.S Customs and Border Protection (CBP). It maintains that CFP has responded to the Department's questionnaires on behalf of itself and its consolidated subsidiaries involved in the production and sale of subject merchandise. CFP contends that this would be consistent with the Department's practice of naming all related enterprises whose data form the premise for the dumping calculation, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR15539, 15541 (April 2, 2002). In that case, the Department stated that "the Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below." CFP claims that the dumping margins in that case included those for the five different named respondents and their named "affiliates." It claims that the Department should indicate that the same rate applicable to CFP be applied to its two affiliates mentioned above, especially since the Department is explicitly naming Three Star as a CFP subsidiary, despite the lack of affiliation.

The domestic interested parties assert that CFP is the exporter of the merchandise, not the subsidiaries, and if a subsidiary of CFP were to export on its own, for cash deposit purposes, the exporter would remain CFP. They argue that in NME methodology, the Department typically does not identify NME producers in conjunction with exporters, unless a producer/exporter combination has been excluded from an antidumping duty order. CFP's subsidiaries are producers of the merchandise that CFP exports, according to the domestic interested parties, and therefore, there is no reason to separately identify them. As for listing Three Star as an affiliate of CFP, the domestic interested parties argue that Three Star had obtained a limited exclusion from the antidumping duty order for exports of its merchandise by a specific exporter, and by mentioning Three Star as a CFP affiliate, it signals a change to CBP from the imposition of the antidumping duty order that they are now affiliated.

Department's Position:

We have determined that it is appropriate to apply CFP's antidumping duty rate to CFP's subsidiaries, Great Wall, First and Fang Zheng Co. (Fang Zheng)⁶. In addition, we have determined it is appropriate to continue to treat CFP and Three Star as a single entity. Therefore, we will reference the consolidated entity, comprised of CFP, Great Wall, First, Fang Zheng and Three Star, in our instructions to CBP. We determined that CFP, Great Wall, First and Fang Zheng are affiliated and should be collapsed. See Memorandum from Edward Yang, Senior Enforcement Coordinator, to Barbara Tillman, Acting Deputy Assistant Secretary, for Import Administration: Administrative Review of the Antidumping Duty Order on Certain Cased

⁶Fang Zheng is a CFP subsidiary that produced subject merchandise during the POR.

Pencils from the People's Republic of China - Affiliation and Collapsing (July 11, 2005). In addition, we determined that the consolidated entity, which we have now collapsed, is entitled to a separate rate. *See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 1965 (January 12, 2005). *See also* CFP's June 7, 2005, submission at page 7 where CFP states that its March 12, 2004, Section A response covers the consolidated entity including Great Wall, First and Fang Zheng. No evidence on the record of this segment of the proceeding contradicts this claim. Therefore, we are applying CFP's rate to the consolidated entity: CFP/Great Wall/First/Fang Zheng. *See Certain Preserved Mushrooms From the People's Republic of China; Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004)

Comment 8: Surrogate Value for Kaolin Clay

CFP/Three Star and SFTC argue that the Department used the wrong surrogate value for kaolin clay for CFP and Jinan, SFTC's supplier. They claim that the Department found two different values for kaolin clay based on Indian import statistics, one for HTS 2507.0001, kaolin crude, dubbed "kaolin clay high" by the Department (13.73 Rps./kg), and HTS 2507.0002, kaolin processed, dubbed "kaolin clay low" by the Department (32.122 Rps./kg). CFP/Three Star and SFTC contend that the Department applied the value for washed kaolin clay (low) (32.122 Rps./kg) in calculating the constructed values for CFP and Jinan, although both companies use raw kaolin clay in the production of their black cores. Based on the description of both companies' production processes, CFP/Three Star and SFTC argue "kaolin clay high" (crude clay) is the appropriate input, not the "washed" clay.

Rongxin stated in its rebuttal brief that it used crude clay, also known as "high" clay during the POR to produce pencil cores.

Department's Position:

For the final results we are continuing to calculate a surrogate value for kaolin clay using import statistics for "kaolin clay low." Respondents' claims in their case briefs and rebuttal briefs that they used kaolin clay high are not supported by any information included in their responses to the Department's requests for information.

On August 27, 2004, the Department issued a written request to CFP/Three Star, SFTC, Rongxin and domestic interested parties requesting that they submit any information which they feel the Department should consider when valuing factors of production in this administrative review. Rongxin submitted surrogate value information on September 23, 2004. CFP/Three Star, SFTC and domestic interested parties submitted the requested information on September 24, 2004. CFP/Three Star and SFTC submitted additional surrogate value information on November 19, 2004. CFP/Three Star, SFTC and domestic interested parties submitted additional surrogate

value information again on February 1, 2005. None of these submissions included any descriptive information with respect to the type of clay used by the individual companies to produce graphite pencil cores.

Rongxin states that it is “perplexed that Commerce did not ask Rongxin what type of clay it used” However, the Department did, in fact, request of all respondents that for all material inputs and factors of production they:

- A. Provide “in-house” specifications, including dimensions and weights as applicable;
- B. Provide U.S. customer specifications;
- C. Provide chemical and physical specifications;
- D. Provide any technical data relating to purity, hardness, grade, moisture content, etc. (Where grades are specified, state whether the grades are internal grades or industry standard grades. In addition, provide a chart showing all possible grades and specifications for each grade. Indicate whether the chart reflects internal or industry standard grades and cite the source of the information included in the chart);
- E. State whether the input is received in finished/unfinished form;
- F. Provide a copy of one invoice from each supplier of each input; and
- G. Provide a copy of a transport document for each grade of slats purchased (*e.g.* ocean bill of lading, truck bill of lading, cargo receipt, delivery receipt, etc.).⁷

For CFP/Three Star we are relying on information contained in its May 12, 2004 supplemental questionnaire response to this question.

Rongxin provided no information regarding clay in response to this question. SFTC described the clay only as “light grey solid.” In addition, at page 3 of the supplemental questionnaire issued to Rongxin, we instructed Rongxin: “Please provide the appropriate USHTS numbers for all raw material inputs.” Rongxin provided the HTS number 6806200000 for clay which covers “exfoliated vermiculite, expanded clays, foamed slag, and other expanded mineral materials including intermixtures thereof.” This category covers neither high nor low kaolin clay

Although in their case briefs Rongxin and SFTC claimed that they used “kaolin clay high,” neither provided evidence to support these claims. Because neither Rongxin nor SFTC responded to the Department’s requests that they provide information as to the type of clay used, pursuant to sections 776(a)(1) and 776(a)(2)(B) of the Act, the Department must determine the type of clay used based on the facts available. Furthermore, by failing to respond to the Department’s requests for specific information regarding their inputs and factors of production,

⁷ See April 14, 2004 supplemental questionnaire to Rongxin at 2, April 14, 2004 supplemental questionnaire to CFP/Three Star at 5-6, and April 21, 2004 supplemental questionnaire to SFTC at 2-3..

Rongxin and SFTC failed to cooperate by not acting to the best of their ability to comply with the Department's request for information. Pursuant to section 776(b) of the Act, we are using an adverse inference in selecting from among the facts otherwise available. As adverse facts available, we are continuing to calculate the surrogate value for kaolin clay using import statistics for "kaolin clay low" for Rongxin and SFTC.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*.

Agree

Disagree

Barbara E. Tillman
Acting Assistant Secretary
for Import Administration